

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JANE DOE, ) Case No. 4:09-cv-03186  
                  )  
Plaintiff )  
                  )  
vs. ) **DEFENDANTS' ANSWER TO**  
                  )  
THE BOARD OF REGENTS OF THE ) **SECOND AMENDED COMPLAINT**  
UNIVERSITY OF NEBRASKA and )  
ELIZABETH BIRNSTIHL, in her )  
Individual and official capacity; )  
                  )  
Defendants. )

The Board of Regents of the University of Nebraska ("Board of Regents") and Elizabeth Birnstihl respond to the Complaint as follows:

1. The allegations contained in paragraphs 1 and 2 consist of plaintiff's characterization of this action or legal conclusions and as such require no response.
2. Defendants admit as alleged in paragraph 3 that plaintiff filed charges with the Nebraska Equal Opportunity Commission and the United States Equal Employment Opportunity Commission concerning the allegations set forth in the Second Amended Complaint.
3. Defendants admit paragraph 4 of the Second Amended Complaint.
4. Defendants admit as alleged in paragraph 6 that the Board of Regents is an employer within the meaning of the Nebraska Fair Employment Practice Act and Title VII of the Civil Rights Act of 1964. Defendants further admit that at all

times relevant to this matter Elizabeth Birnstihl was an Associate Dean and State 4-H Administrator employed by the Board of Regents.

5. Defendants admit as alleged in paragraph 9 that plaintiff was hired by the defendant Board of Regents as the director for a youth program operated by the defendant in Nebraska. Defendants also admit that plaintiff was terminated from her position.

6. Defendants deny the balance of plaintiff's allegations not specifically admitted herein, except those which constitute admissions by the plaintiff.

7. The Second Amended Complaint fails to state a claim for which relief may be granted.

8. All of the defendants' personnel decisions concerning the plaintiff and all of their actions toward her were made for legitimate business reasons and without regard to her religious beliefs or speech.

9. Any statements made by plaintiff which form the basis of her First Amendment claim did not address matters of public concern and were not protected activity under the United States Constitution.

10. Defendant Birnstihl is immune from damages because of the Eleventh Amendment to the United States Constitution.

11. Plaintiff has failed to mitigate her damages.

WHEREFORE, defendants pray that the plaintiff's Second Amended Complaint be dismissed at her cost.

BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA and  
ELIZABETH BIRNSTIHL,  
Defendants

By: s/David R. Buntain  
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**CERTIFICATE OF SERVICE**

I, David R. Buntain, hereby certify that this 6<sup>th</sup> day of October, 200, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to attorney for the plaintiff, Kathleen Neary.

s/David R. Buntain